DETAILED ACTION

1. Claims 33-37 and 45-47 remain for examination. The correspondence filed 3/10/08 added claims 45-47, amended claims 33-37, and cancelled claims 1-5, 7-9, 13-32, and 38-44.

Response to Arguments

2. Applicant's arguments with respect to claims 33-37 and 45-47 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 33, 36, 37, and 45 are rejected under 35 U.S.C. 102(a) as being anticipated by PCT Publication WO 00/36560 (hereinafter, "Wilcox").

Regarding claim 45:

Wilcox discloses a portable authentication device comprising: a body (see the embodiment(s) of Figures 7A-7C); a communication portion disposed in said body for receiving externally-supplied power and for communicating data between the authentication device and an authentication device interface (page 24, lines 22-29); an internal power mechanism disposed in said body and adapted for storing externally supplied power (page 25, lines 11-17); an identification portion disposed in said

body (see the driver license picture depicted on Figures 7A-7C); a display area disposed in said body and including an active reflective bistable display, wherein data remains displayed when power is not supplied to the display (page 3, line 23 – page 5, line 21) further wherein the display area comprises a variable display enabled for bistable display of authentication information (Ibid, and page 24, lines 3-21); a machine readable portion comprising at least one of a magnetic strip and an optically readable portion, coupled to said body, enabled for storage of machine data (Ibid; see also page 9, line 27 – page 10, line 14); and a memory portion, disposed in said body, enabled for storing data, wherein said memory portion stores data for display in said active display area and for user authentication (page 10, lines 18-21; page 29, lines 1-3); and a processor disposed within the body of said smart card wherein said processor provides data to said active display, processes authentication information received from the authentication device interface, and provides a secure data link between the authentication device and the authentication device interface (page 29, lines 1-3; page 28, lines 25-31).

Regarding claim 33:

Wilcox further discloses wherein the communication portion is at least one contact (page 29; lines 1-3; page 31, lines 1-5).

Regarding claims 36 and 37:

Wilcox further discloses wherein the body is the size and shape approximating a standard credit card (by virtue of the fact that the Wilcox invention may be implemented as a credit card: page 7, lines 14-16), which would inherently be approximately 85mm x 55mm x 1mm (cf. the previous Office Actions and portions of Freeman cited therein).

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilcox, in view of Cesaire et al. (U.S. Patent 5,942,738).

Regarding claims 34 and 35:

Wilcox does not disclose an embodiment of that invention, be it a smart card or otherwise, comprising either a wireless transmitter/receiver or an antenna. However, Cesaire discloses that it had been well known in the art for smart cards to be equally capable of communication with smart card readers either by physical contact (as disclosed by Wilcox) or alternatively by wireless methods via an antenna (col. 1, lines 25-40). The claims are thus obvious because the technique of having a smart card communicate wirelessly to a smart card reader was a known option that was within the technical grasp of one of ordinary skill in the art. If that were to lead to anticipated success, it would likely be the product not of innovation but of ordinary skill and common sense. *KSR v. Teleflex*, 550 U.S. at ___, 82 USPQ2d at 1397.

7. Claims 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sehr (U.S. Patent 6,085,976) in view of Wilcox.

Regarding claim 46:

Sehr discloses an authentication system comprising: a portable authentication device having at least a body, communication portion, memory, and a processor (a smart card: col. 6, lines 15-40); a database server, wherein said authentication device interface couples said portable authentication device and said database server (col. 8, lines 5-60); an authentication device reader, coupled to said

authentication device data interface, for communicating directly with and identifying said portable authentication device (col. 6, lines 40-50); a public network in communication with each of said portable authentication device, said database server and said authentication device interface (col. 7, lines 15-25); a venue portion, coupling said database server and said authentication device data interface, wherein said venue portion communicates authentication data associated with a venue to said authentication device interface upon detection of said authentication device (col. 8, lines 50-60; col. 20, lines 1-20); a patron portion, coupling said database server and said authentication device interface, wherein said patron portion communicates authentication data associated with a venue to said database server in response to a request by a patron (col. 23, line 5 – col. 24, line 20); and a phone ordering interface, coupling said database server to a public network, wherein said phone ordering interface communicates authentication data associated with a venue to said database server in response to a request by a patron received via a public switched telephone network [PSTN] (col. 7, lines 15-25).

Sehr is silent regarding at least some of the details of the portable authentication device, including that said device has an active reflective bistable display. However, as discussed *supra*, Wilcox discloses a smart card portable authentication device comprising each and every limitation of the recited portable authentication device for use as part of a system for authentication purposes (page 3, line 23 – page 5, line 21; page 24, lines 3-21). The claim is thus obvious because all of the claimed elements were known in the prior art, and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Regarding claim 47:

Sehr discloses a method for authenticating a patron having an authentication device, comprising: providing an authentication device having a communication portion for receiving externally supplied power and for communicating data between the authentication device and an authentication device interface (a smart card: col. 6, lines 15-40); providing a processor, disposed in said authentication device, for at least processing authentication information received from the authentication device interface, and providing a secure data link between the authentication device and the authentication device interface (Ibid); receiving a request from the patron for authorization to enter a venue (e.g. col. 13, lines 5-35); updating a database server with authentication data associated with the venue in response to the request for authorization (col. 8, lines 50-60; col. 20, lines 1-20); establishing a communication link between the authentication device and the database server through the communication portion (col. 18, lines 55-65); comparing identification data of the authentication device and the authentication data, wherein the identification data is identifiable with the patron based on patron data stored in the database server (col. 23, lines 20 – col. 24, line 20); granting to the patron access to the venue if the identification data of the authentication device and the authentication data match (Ibid); and verifying an association between the patron and the authentication device prior to said granting (Ibid, but particularly col. 23, lines 35-40).

Sehr is silent regarding the smart card of that invention having an active reflective bistable display and using said display to display data corresponding to the authentication data on the authentication device, wherein data remains displayed on the display when power is not supplied to the display. However, as discussed *supra*, Wilcox discloses a smart card comprising these limitations for use in a smart card used for authentication purposes (page 3, line 23 – page 5, line 21; page 24,

lines 3-21). The claim is thus obvious because all of the claimed elements were known in the prior art, and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent 6,216,227 to Goldstein et al., and U.S. Patent 6,753,999 to Zehner et al.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas Gyorfi whose telephone number is (571)272-3849. The examiner can normally be reached on 8:30am - 5:00pm Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kim Vu can be reached on (571) 272-3859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TAG
6/13/08
/KIMYEN VU/
Supervisory Patent Examiner, Art Unit 2135